

Service Date: June 6, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF the Application of)	
Montana Wireless, Inc. and Blackfoot Telephone)	UTILITY DIVISION
Cooperative, Inc. Pursuant to Section 252(e) of)	
the Telecommunications Act of 1996 for)	DOCKET NO. D2000.3.35
Approval of Their Interconnection and)	
Reciprocal Compensation Agreement.)	ORDER NO. 6252

FINAL ORDER

I. Introduction and Procedural Background

1. On February 8, 1996, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the 1996 Act) was signed into law, ushering in a sweeping reform of the telecommunications industry that is intended to bring competition to the local exchange telecommunications market. The 1996 Act imposes on companies like Blackfoot Telephone Cooperative, Inc. (Blackfoot) certain duties to interconnect with new competitive entrants in their local exchange markets. 47 U.S.C. . . 251(a) and (b) and 252(a).

2. Blackfoot and Montana Wireless, Inc. (MWI) have negotiated an interconnection agreement. The agreement is entitled "Interconnection and Reciprocal Compensation Agreement" (Agreement). MWI and Blackfoot submitted the Agreement to the Montana Public Service Commission (Commission) for approval on March 10, 2000. The parties' Agreement was reached through voluntary negotiations and requires Commission approval prior to implementation pursuant to 47 U.S.C. . . 252(e). The Commission must approve or reject the Agreement no later than June 8, 2000--90 days following the request for approval--or it will be deemed approved. 47 U.S.C. . . 252(e)(4).

3. On March 20, 2000, the Commission issued a notice entitled Notice of Application for Approval of Local Interconnection Agreement and Opportunity to Intervene and Comment. The notice established April 3, 2000 as the deadline for intervention and limited

intervenors to addressing the grounds for Commission action identified in Section 252(e)(2)(A) of the Act. The Notice stated that no public hearing was contemplated by the Commission unless requested by an interested party by April 3, 2000. The Notice further stated that comments were required to be filed no later than April 14, 2000.

4. The Notice published by the Commission in this proceeding advised interested parties in the geographic areas affected by the Agreement that intervention in the proceeding was limited and that the Montana Consumer Counsel (MCC) could be contacted to represent consumer interests. The MCC neither requested intervention nor filed comments. The Commission received no comments.

5. Upon review of the Agreement, the Commission makes the following findings, conclusions and order.

II. Applicable Law and Commission Decision

6. The Agreement between Blackfoot and MWI provides for parties to establish a reciprocal compensation interconnection arrangement that compensates each other for terminating local telecommunications traffic that originates on the other party's network.

7. The Commission must approve or reject the parties' agreement, with written findings as to any deficiencies, no later than June 8, 2000. 47 U.S.C. . . 252(e)(1) and (4). Section 252(e)(2)(A) limits the grounds for rejection of an agreement reached by voluntary negotiation:

- (2) GROUNDS FOR REJECTION - The State commission may only reject--
 - (A) an agreement (or any portion thereof) adopted by negotiation under [47 U.S.C. . 252(A)] if it finds that:
 - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

8. Notwithstanding the limited grounds for rejection in 47 U.S.C. . 252(e)(2)(A), the state commission's authority is preserved in . 252(e)(3) to establish or enforce other requirements of state law in its review of arbitrated or negotiated agreements, including requiring

compliance with state telecommunications service quality standards or requirements. Such compliance is subject to . 253 of the 1996 Act which does not permit states to permit or impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

9. Unlike an agreement reached by arbitration, a voluntarily negotiated agreement need not comply with standards set forth in . 251(b) and (c). Significantly, standards set forth in . 251(c) and which this agreement may have been negotiated "without regard to" include the following:

- (c) **ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.** --In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:
 - (2) **INTERCONNECTION.**--The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--
 - (A) for the transmission and routing of telephone exchange service and exchange access;
 - (B) at any technically feasible point within the carriers' network;
 - (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate or any other party to which the carrier provides interconnection; and
 - (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

47 U.S.C. . 251(c). This section and . 252(a)(1) of the Act permit parties to agree to rates, terms and conditions for interconnection that may not be deemed just, reasonable and nondiscriminatory, and which are not determined according to the pricing standards included in . 252(c) of the Act, as would be required in the case of arbitrated rates set by the Commission. By approving the Agreement, the Commission does not intend to imply that it approves of all the terms and conditions included in the Agreement and makes no findings herein on the appropriateness of many of the terms and conditions. Our interpretation of the 1996 Act is that . 252(a) and (c) prevent the Commission from addressing such issues in this proceeding.

10. No comments have been received that express any reservations about the parties'

Agreement not complying with federal law as cited above or with state telecommunications requirements. The MCC, who represents the consumers of the State of Montana, has not intervened or filed comments that indicate that he believes that the Agreement is not consistent with the public interest, convenience and necessity. No other telecommunications carrier has filed comments to indicate that the Agreement is discriminatory toward a carrier not a party to the Agreement.

11. When parties execute an interconnection agreement and one or both parties submit it to the Commission for approval, the Commission must approve or reject it (in whole or in part) according to the standards in § 252 of the 1996 Act--to determine if it discriminates against a carrier not a party to the agreement or is inconsistent with the public interest, convenience and necessity. The Commission can reject portions of the agreement, but it cannot require additional provisions.

12. The Commission finds that the parties' Agreement appears to conform to the standards required by the 1996 Act. On that basis the Commission approves the Agreement.

III. Conclusions of Law

1. Blackfoot and MWI are telecommunications carriers subject in certain circumstances to Commission regulation.

2. The Commission has jurisdiction to approve the Interconnection Agreement negotiated by the parties and submitted to the Commission for approval according to Section 252(e)(2)(A). Section 69-3-839, MCA.

3. The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. *See generally*, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (*amending* scattered sections of the Communications Act of 1934, 47 U.S.C. § 151, *et seq.*). The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

5. Approval of interconnection agreements by the Commission is subject to the requirements of federal law as set forth in 47 U.S.C. § 252. Section 252(e) limits the Commission's review of a negotiated agreement to the standards set forth therein for rejection of such agreements. Section 252(e)(4) requires the Commission to approve or reject the Blackfoot/MWI Agreement by May 22, 2000, or the Agreement will be deemed approved.

IV. Order

THEREFORE, based upon the foregoing, it is ORDERED that the interconnection Agreement between Blackfoot Telephone Cooperative, Inc. and Montana Wireless, Inc. is approved as discussed herein, subject to the following condition:

The parties shall file subsequent amendments to their Agreement with the Commission for approval pursuant to the 1996 Act, including any provisions that are developed pursuant to the parties' statements in this Agreement.

DONE AND DATED this 30th day of May, 2000, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY McCaffree, Vice-Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.